THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.7832 of 2001

Dated: 31-08-2007

Between:
B. Krishnaji

…. PETITIONER

AND
The Visakhapatnam Urban
Development Authority and others.

…. RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.7832 of 2001

ORDER:

The petitioner filed instant writ petition seeking a Writ of Mandamus directing the respondents, namely, Visakhapatnam Urban Development Authority (VUDA) and Special Officer/Competent Authority, Urban Agglomeration, to implement the proceedings in C.C. No. 1075; 1076/ 76-B2, dated 25.10.1977, passed by the Special Officer and for a consequential direction not to dispossess the petitioner from the land in Survey No.129/29 situated at Yellapuvanipalem, Gopalapatnam Area, Visakhpatnam District.

The case of the petitioner is that Marisetti Simhachalam was the owner of the property in Survey No. 129/29 along with other properties. He filed a declaration under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 ('the Act', for brevity), being C.C. Nos.1075 and 1076 of 76. The second respondent after processing the same issued proceedings, dated 25.10.1977 (referred to hereinabove) declaring Marisetti Simhachalam as non-surplus holder for the purpose of the Act. Thereafter, Simhachalam sold an extent of 193.6 square yards of land to Gorusu Rama Rao. The purchaser then approached the second respondent under Section 26 of the Act. Considering the application, the second respondent issued an order under Section 26(2) of the Act informing Rama Rao that the Special Officer does not wish to exercise the right of first option purchase of an extent of 193.6 square yards of land based on the sale deed executed by Simhachalam in favour of Rama Rao on 28.5.1979. Subsequently, under registered sale deed, dated 7.2.1983, the petitioner herein purchased the property. It is alleged by the petitioner that in the first week of April, 2001, the officials of VUDA dug up poles to fix boundary poles. The petitioner then made a representation on 16.4.2000, in vain. Therefore, he filed instant writ petition.

The Special Officer has filed a counter affidavit. It is stated that Simhachalam filed a declaration, being C.C. No. 1076/76, but did not declare the land in Survey No.129/29. It is, however, admitted that his wife Satyavathi declared an extent of 2226 square meters of land in Survey No.129/29 of Gopalapatnam. It is contended that as Simhachalam did not declare the subject land, he could not have sold to the petitioner's vendor and any such sale is void. The allegation

made by the petitioner that Rama Rao obtained necessary permission under Section 26(2) of the Act is not specifically denied.

This matter was heard on 6.8.2007. As the counter was not filed, this Court adjourned the matter to enable the respondents to file counter. The second respondent, thereafter, filed the counter and the matter was heard again on 9.8.2007. The learned Assistant Government Pleader (Urban Land Ceiling) was directed to produce the records. Today, the learned Assistant Government Pleader produced the record in C.C. No. 1076/76 filed by Marisetty Simhachalam, but the record of C.C. No. 1075/76 filed by Marisetty Satyavathi, W/o. Marisetty Simhachalam is not produced.

Be that as it is, the learned counsel for the petitioner has placed reliance on the proceedings, dated 25.10.1977, issued by the second respondent declaring Simhachalam as non-surplus holder. He also placed reliance on the proceedings dated 18.1.1983 issued under Section 26(2) of the Act to Rama Rao permitting him to transfer the same. He submits that when once such permission is granted, there cannot be any prohibition for transfer of the land. **Opposing** the writ petition, learned Assistant Government Pleader submits that when Simhachalam did not declare the land in Survey No. 129/29, the question of the declarant transferring the land to Rama Rao and thereafter, transferring the land in favour of the petitioner does not arise. According to the learned Assistant Government Pleader, all the transactions are void.

In this case, the proceedings, dated 25.10.1977, issued by the second respondent declaring Simchalam as non-surplus holder is not seriously disputed. The issue of Certificate under Section 26(2) of the Act by the Special Officer on 18.1.1983 is also not demurred. In this background, it must be held that when once Section 26(2) of the Act Certificate is issued by the Special Officer informing that he does not want to exercise first option to purchase, it gives a right to the person to transfer the land to whomsoever he may like. Unless and until such Certificate is held or the proceedings, dated 25.10.1977 are properly reviewed by a competent authority, the petitioner's sale cannot be treated as void or illegal. Any interference with the possession of the petitioner, who purchased the property under registered sale deed, dated 7.2.1983, would not be permissible in law.

Therefore, the writ petition is disposed of with an observation that there shall be no interference with the possession or enjoyment of the property of the petitioner. There shall be no order as to costs.

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(V.V.S. RAO,J)

28th August, 2007

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